



Department of Health and Human Services

Health Care Financing Administration

Region III

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150 S. Independence Mall West

Philadelphia, PA 19106-3413

Elizabeth S. Lawton, Commissioner

Bureau for Medical Services

Department of Health & Human Resources

State Capitol Complex, Building 6

Charleston, West Virginia 25305

West Virginia's Request to Renew Waiver # 0133.90.R3.

Dear Ms. Lawton:

This is to inform you that your request to renew West Virginia's Waiver for the Mentally Retarded and Developmentally Disabled (HCFA Control number 0133.90.R3.) has been approved for a five-year period effective July 1, 2000, as requested. This action is authorized under the provisions of § 19159c) of the Social Security Act (the Act).

On March 6, 2000, the State submitted a request to renew the waiver. Our approval is based upon a review of your initial request and the additional information we received on September 7, 2000. Our primary concern centered on the required assurances regarding free of choice of providers that have been established by § 1902(a)(23) Act. As you indicated, your Agency is constrained by a State law requiring new providers to receive a certificate of need (CON) from the West Virginia Health Care Authority. An applicant for a CON must prove that its new services would address an unmet need. In addition, the applicant must prove that serving individuals who otherwise would not be served would not cause West Virginia to incur any increased expenses. Since these requirements are considered to be mutually exclusive, it has been problematic for a provider to obtain a CON.

We are pleased to note the following statements in your revised application:

- "West Virginia allows any agency that meets the provider qualifications established by the State to deliver MR/DD Waiver service coordination and/or direct services to enroll as a provider of these services.
- "There are no restrictions on the geographic catchment area that a behavioral Health Center can serve, based on applicable state and federal laws. More service providers can and do enroll at any time."
- "The State assures that each individual found eligible for the waiver will be given free choice of all qualified providers of each service included in his or her written plan of care."
- "For the MR/DD Waiver Program, the Department has conducted a needs assessment of providers consumers and others. The assessment has demonstrated that there is a need for more providers to increase individual choice. We anticipate issuing a request for Information and enrolling the first new providers under this process by January 1, 2001. In the meantime, new providers are being licensed and enrolled under the existing CON process. We are using a very broad interpretation of the terms 'underserved' and 'lack of choice' and do not intend to add only one or two providers to an area."

We regard the above-cited statements, which clearly express the need, desire, and ability to enroll new providers, as a positive indication that West Virginia will shortly be in a position to fulfill the mandate of free choice of providers for all waiver services. However, to insure compliance with the requirements of § 1902(a)(23) of the Act, we will continue to maintain increased oversight of this waiver program. Accordingly, HCFA must be informed if these statements are no longer applicable. You also indicated in the renewal application that your ability to implement free choice of providers is affected by the State Health Plan, the State Mental Health Plan, and your Department's programmatic and fiscal plans for behavioral health services. On an ongoing basis, HCFA must be kept informed of any changes in these plans that would affect your policies regarding free choice of providers. Likewise, HCFA must also be kept informed of any legal or legislative actions that might affect your ability to implement free choice of providers. In the future, we plan to ask for information that summarizes your actions regarding requests by providers for CONs necessary to serve waiver consumers.

Based on the assurances and information you provided, I approve your request to renew your Medicaid waiver to provide home and community-based services to mentally retarded and developmentally disabled individuals. The approval covers the period July 1, 2000, to June 30, 2005. This approval is subject to your agreement to provide home and community-based services, on an annual basis, to no more individuals than those indicated as the value of "C" in your approved per capita expenditure estimates (shown below).

Waiver Year	"C" Value	"D" Value
Year 1 July 1, 2000 - June 30, 2001	2,294	\$ 37,185
Year 2 July 1, 2001 - June 30, 2002	2,494	\$ 38,524
Year 3 July 1, 2002 - June 30, 2003	2,644	\$ 39,911
Year 4 July 1, 2003 - June 30, 2004	2,794	\$ 41,348
Year 5 July 1, 2004 - June 30, 2005	2,944	\$ 42,837

The Waiver will enable West Virginia to provide case management, respite care, habilitation including residential habilitation, day habilitation with psychotherapy and psychiatric services, prevocational services, and supported employment services, environmental accessibility adaptations, skilled nursing, transportation, companion services, extended State plan services including physician services, physical therapy, occupational therapy, speech, hearing and language services to individuals with mental retardation and other developmental disabilities who would otherwise require institutional care in an intermediate care facility for the mentally retarded or persons with related conditions (ICF/MR). This waiver carries HCFA control number 0133.90.R3. Please refer to this number in all future correspondence regarding this waiver renewal.

Please contact Bill Davis of my staff at (215) 861-4204, if you have any questions.

Sincerely,

Nancy B. OConnor
Acting Regional Administrator